IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SECOND DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 22530 of 2003

Between:

G. Shravan Kumar Reddy, S/o. G. Ram Reddy
O/o. The Director General of Vigilence and Enforcement, 9th Floor,
B.R.K.R. Complex,
Near Tankbund, Hyderabad.

..... PETITIONER

AND

1 The State of Andhra Pradesh,

represented by its Principal Secretary, Industries &

Commerce (M.I) Department, Secretariat, Hyderabad.
2 The Director of Mines & Gelogy, A.P.

8th Floor, B.R.K.R. Complex,

Near Tankbund, Hyderabad.
3 V. Bhaghavantha Reddy,

Assistant Director of Mines & Geology,
Khammam Dist.
4 K. Laxman Babu,
Assistant Director of Mines & Geology,

Palamaneru, Chittoor District.

5 K. Subba Rao,

Assistant Director of Mines & Geology,

Nizamabad, Nizamabad District.

6 W.B. Chandra Sekhar,

Assistant Director of Mines & Geology,

Karimnagar, Karimnagar District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ or order or direction more particularly in the nature of Writ of Mandamus calling for records relating to the Memo No. 9900/E4/1998, dated 26-5-1998 issued by the 2nd Respondent and the consequential order of the A.P. Administrative Tribunal passed in O.A. No. 3908/98, dated 14-10-2003 and the consequential orders if any passed by the Official Respondents and set aside the same by holding as arbitrary, illegal and contrary to settled law.

Counsel for the Petitioner: MR.P.SURESH REDDY

Counsel for the Respondents 1 & 2 : GP FOR SERVICES I

Counsel for the Respondent No. 3 : Mr.M.Venkat Ram Reddy

The Court made the following :

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ORDER: (per P.S.Narayana.,J)

One Koteswara Raju and the present writ petitioner had set the law in motion by filing O.A.No.3908/98 on the file of A.P. Administrative Tribunal, in short referred to as “Tribunal” hereinafter, questioning Memo No.9900/E4/88, dated 26-5-1998 on the ground that the same is arbitrary, illegal, violative of Articles 14 and 16 of the Constitution of India and the Special Rules in G.O.Ms.No.215, dated 13-5-1970, A.P. State and Subordinate Service Rules 1962 and 1996 and without jurisdiction.

2. It may be appropriate to have at look at the impugned Memo in the O.A. which reads as hereunder :

GOVERNMENT OF ANDHRA PRADESH

DEPARTMENT OF MINES AND GEOLOGY : HYDERABAD

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Memo No.9900/E4/88 Dated : 26-5-1998

Sub: Establishment – Department of Mines and Geology, Hyderabad – Regularisation of Service and Declaration of probation in the category of Inspectors in the District and Regional Offices – Issue of notices to the affected individuals – Reg.

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The attention of the Royalty Inspectors whose names are enlisted in the Annexure enclosed to this informed that the post of Inspector is a District Cadre post and it comes under the purview of Andhra Pradesh Public Service Commission. In the year 1986 the Andhra Pradesh Public Service Commission has sponsored the candidates as per the instructions of the Director of Mines and Geology, the Asst. Directors of Mines and Geology who are appointing authorities have assured appointment orders to the Inspectors so sponsored by the Andhra Pradesh Public Service Commission has furnished the list of candidates so selected for appointment as per the Rank in the combined merit list for both Multi zone I and Multi Zone II put together. The order of merit so given by the Andhra Pradesh Public Service Commission will have to be taken into consideration for the purpose of seniority to regularization of services of the Inspectors have to be done by the Asst. Director of Mines and Geology into Inspector Cadre. But as seen from the regularization proceedings which received from the respective Assistant Directors of Mines and Geology, the Assistant Directors of Mines and Geology have regularized the services of Inspectors from the date of joining duty by Inspectors in their respective offices. This is not correct. The date of regularization of the Inspectors should be strictly in accordance with the merit list communicated by the Andhra Pradesh Public Service Commission as mentioned.

In the circumstances stated above, the Royalty Inspectors listed in the Annexure enclosed to this Memo are hereby directed to file their objections, if any against the seniority given in the cadre of Inspectors with effect from 1986 i.e., from the date of sponsoring their names by the Andhra Pradesh Public Service Commission in the year 1986. They should file their objections if any within 15 days from the day of receipt of the Memo, failing which further necessary action will be taken for regularization of services in the cadre of Inspector as per the list communicated by the A.P.P.S.C. in the year 1986.

Sd/-

DIRECTOR OF MINES AND GELOGY

ANNEXURE

MULTI ZONE-I

Sl.No. Seniority as per date of Seniority now proposed as per Regularisation Service Commission Ranking

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1. Sri V.Koteswara Raju 1. Sri V.Bhaghavantha Reddy
2. Sri G.Shravan Kumar Reddy 2. Sri K.Laxman Babu
3. Sri K.Laxman Bau 3. Sri K.Subba Rao
4. Sri V.Bhaghavantha Reddy 4. Sri W.B. Chandrashaker
5. Sri K.Subba Rao 5. Sri V.Koteswara Raju
6. Sri W.B. Chandra Shaker 6. Sri G.Shravan Kumar Reddy
7. Sri K.Venkat Rao 7. Sri D.V.V. Suryanarayana Reddy
8. Sri D.V.V.Suryanarayana 8. Sri K.Venkat Rao Reddy

MULT ZONE II

1. Sri P.Pullaiah 1. Sri P.Pullaiah
2. Sri M.Sudhakar 2. Sri M.Sudhakar
3. Sri G.Rama Chandra Rao 3. Sri G.Rama Chandra Rao

Sd/-

Director of Mines and Geology

The said O.A.No.3908/98 was dismissed by the Tribunal on 14-10-2003 and one of the unsuccessful applicants filed the present Writ Petition praying for the relief as hereunder:

> "For the reasons, grounds and facts stated in the accompanying affidavit, it is prayed that the Hon'ble Court be pleased to issue an appropriate writ or order or direction more particularly in the nature of the writ of mandamus calling for records relating to the Memo No.9900/E4/98 dated 26-5-1998 issued by the 2nd respondent and the consequential order of the Hon'ble A.P.Administrative Tribunal passed in O.A.No.3908/98, dated 14-10-2003 and the consequential orders if any passed by the Official Respondents and set aside the same by holding as arbitrary, illegal and contrary to settled law and pass such other or further order or orders as deemed fit and proper in the circumstances of the case."

3. Sri Suresh Reddy, the learned Counsel representing the writ petitioner had traced the historical background of this litigation and would maintain that though the impugned Memo is a show-cause-notice calling for objections, the same cannot be sustained since the 3rd respondent has no locus at all to make the alleged representation and further the issuance of the impugned memo by the 2nd respondent even suffers from lack of jurisdiction and hence on both the grounds the Tribunal instead of quashing the memo had dismissed the O.A. on unsustainable grounds. The learned Counsel also had traced the dates of regularization and the subsequent promotions and the long lapse of time when the 3rd respondent

thought of filing a representation to revise the seniority which had been settled long back. The Counsel also pointed out that the seniority had been settled depending upon the District Units long back and the same shall not be disturbed at this distant point of time by issuing the memo which had been impugned in the O.A. The Counsel also pointed out that the rules at the time of recruitment alone would be applicable and not the subsequent rules. If the District as a Unit is taken into consideration it is clear that the 3rd respondent has no locus at all to maintain the representation questioning the seniority fixed in relation to yet another District only on the ground that at the time of considering for promotion in the hierarchy his promotion chances would be affected. In substance the stand of the Counsel is that due to long lapse of time, the issuance of the impugned memo is definitely bad and also the 3rd respondent of a different Unit altogether cannot make a representation of this nature in pursuance of which the impugned show-cause-notice could have been issued and the same suffers from jurisdictional flaw. If this is permitted the Counsel would maintain that there will be several problems and the litigations would be unending if settled rights are disturbed after a long lapse of time in the way in which it had been sought to be disturbed by the 3rd respondent by making a representation to 2nd respondent and the 2nd respondent issuing a memo which had been called in question.

4. Per contra Sri Prakash Reddy, the learned Counsel had pointed out to the merit list and the mere fact that the writ petitioner and the 3rd respondent are at different District Units would not alter the situation in any way since when time had been given to join and within the time if a candidate joins, the merit of A.P.Public Service Commission is to be taken into consideration and the seniority to be fixed in accordance with the same. The Counsel also pointed out that when the posts are either Zonal posts or Multi Zonal posts or State-wide posts, the mere fact that at the lower hierarchy District would be the Unit would not alter the situation in any way since the integrated seniority list may have to be prepared on the strength of original merit irrespective of the District and the Rules may have to be interpreted only in consonance with the said stand taken by the 3rd respondent and not otherwise. The mere joining, whether prior or late, within the time permitted, would not alter the situation in any way and the merit fixed by the A.P.Public Service Commission cannot be disturbed in such a fashion. This may have to be viewed in the light of the next promotional post and hence neither the question of locus nor the question of jurisdiction are involved in the matter. The Counsel also had pointed out to Rule 33(b) of the A.P. State and Subordinate Service Rules and the Counsel also pointed out that the basis of selection is one and as can be seen the 3rd respondent was at the

top in the merit list and Rule 5 of the Adhoc Rules may have to be read in consonance with Rule 33(b) of the A.P. State and Subordinate Service Rules and when the mistake had been detected, rightly the 3rd respondent made a representation and hence in such a matter the delay would be of no consequence.

5. The learned Government Pleader for Services-I had taken this Court through the stand taken in this regard by the Government in the detailed counter affidavit and also had well supported the memo which had been impugned in the O.A. and also the stand taken by the 3rd respondent in this regard.

6. Heard the Counsel.

7. The show-cause-notice calling for objections dated 26-5-1998 had been impugned in the O.A. referred to supra which was dismissed by the Tribunal and aggrieved by the same, one of the unsuccessful applicants had preferred the present Writ Petition and the said show-cause-notice calling for objections why the seniority fixed should not be disturbed is called in question in the O.A. and in the present Writ Petition on the ground that inasmuch as seniority had been fixed about more than 12 years back at the District level, the 3rd respondent belonging to a different District altogether has no locus-standi at all to make the said representation and hence the 2nd

respondent has no jurisdiction to issue the impugned Memo. The stand taken by the writ petitioner in the affidavit filed in support of the Writ Petition is that the 1st respondent created the post of Inspector (Mines) in the Department of Mines & Geology by framing the Adhoc Rules in G.O.Ms.No.215, dated 13-3-1970. According to these Rules, the posts have to be filled up by direct recruitment. These posts are District cadre posts i.e., the Unit of appointment is Revenue District and the appointing authority is the Assistant Director of Mines & Geology of concerned District. The other categories of posts and Rules are as given below:

POSTS RULES

1. Inspector of Mines G.O.Ms.No.215, dated 13-3-1970
2. Technical Assistant G.O.Ms.No.1153, dated 1-2-1973
3. Royalty Inspectors G.O.Ms.No.555, dated 18-6-1976
4. Assistant Geologist G.O.Ms.No.59, dated 10-3-1998

It was further stated that under the Adhoc Rules, an appointment is made to the post of Inspector by direct recruitment and they are eligible for promotion as Technical Assistants after getting experience of not less then two years (not a Selection post) and further promotion to the post of Royalty Inspector is after getting an experience of three years as Technical Assistant (Selection post). Further promotion to the post of Assistant Geologist (State cadre post) is after three years

of service in the Department as Royalty Inspector. It was further averred that the Government in G.O.Ms.No.490, dated 1-6-1976, Memo dated 6-12-1976 and G.O.Ms.No.348, dated 11-6-1977 had organized local cadres in the Mines & Geology Department as follows :

DISTRICT CADRE

1. Inspector (2) L.D.C. (3) Steno typist etc.

MULTI ZONAL CADRE

a) Technical Assistants 1. Zones I, II, V and VI

2. Zones III and IV

b) Royalty Inspectors 1. Zones I, II, V and VI

2. Zones III and IV

From the category of Assistant Geologist and Assistant Director etc., they are State cadre posts covered by special Rules framed in G.O.Ms.No.385, dated 7-5-1979.

8. It was also further averred that the A.P.Public Service Commission notified calling for applications for direct recruitment to 9 vacancies of Mines Inspectors in the year 1985 and held the written examination on 10-1-1986. The writ petitioner and the other applicant in

O.A.No.3908/98 and the unofficial respondents were selected pursuant to the exams and the Commission had allotted the writ petitioner, the other applicant in the O.A. and the unofficial respondents to the Unit of appointment (concerned Districts as per Rules) as follows :

Name of the Candidate Date of appointment/
District

1. V.Koteshwer Raju Visakhapatnam
2. G.Shravankumar Reddy Hyderabad
3. V.Bhagwanth Reddy Warangal
4. K.Laxman Babu Nalgonda
5. K.Subba Rao East Godavari
6. W.B. Sekher Adilabad

Pursuant to the said allotment of the writ petitioner and the other persons i.e., the other applicant in the O.A. and the unofficial respondents the concerned Unit appointing authorities i.e., Assistant Director of Mines & Geology of concerned District, issued appointment orders to the concerned candidates. The details of appointment and regularization in the cadre of Inspector of Mines of applicants are as below:

Date of Starting Declaration Full Member
Joining of probation of probation

23(a) 25(b) 29(a)

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1. 1st Applicant 16-4-86 16-4-86 12-5-88 13-5-88

2. 2nd Applicant 21-4-86 21-4-86 4-7-88 -

Further it is stated that after applicants in O.A. and the unofficial respondents put in required service, they had been promoted to the post of Technical Assistant (non-selection post of Multi Zone I) by integrating the seniority of different Units of appointments (Districts) in the cadre of Inspectors in accordance with Rule 33(a) of General Rules (State and Subordinate Rules, 1962). The applicants in O.A. had been regularized in the cadre of Technical Assistants as follows :

TECHNICAL ASSISTANTS

Date of Starting of Declaration of Probation

Joining Probation

25(a) 25(b)

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1. 1st Applicant 13-5-88 13-5-88 20-5-89

2. 2nd Applicant 1-6-88 5-7-88 4-8-89

As the applicants in O.A. and unofficial respondents having the

eligibility and qualifications were promoted to the next post of Royalty Inspectors, the writ petitioner was promoted as Royalty Inspector by an order dated 16-10-1990 and he joined on 13-11-1990. The 2nd applicant in O.A. and the unofficial respondents were promoted as Royalty Inspectors by order dated 23-3-1991 and all the persons are working as Royalty Inspectors in Multi Zone I as on the date of filing of the O.A. While making all these promotions the integrated seniority list from the cadre of Inspectors prepared in accordance with General Rule 33(a) by taking the date of regularization in the cadre of Inspectors was taken into account wherein the applicants in O.A. are at S.Nos.1 and 2 respectively and the unofficial respondents are at S.Nos.3 to 6. It was further averred that now there are vacancies in the cadre of Assistant Geologists, a State cadre post and the applicants in O.A. are eligible and qualified and should be considered for promotion.

9. It was further averred that at this stage the 3rd respondent filed a representation dated 17-4-1998 to the 2nd respondent (Head of the Department) to alter the dates of regularization in the cadre of Inspectors as per the list communicated by the A.P.Public Service Commission and to modify the seniority accordingly. Pursuant to the said representation of the 3rd respondent, the 2nd respondent-Director of Mines & Geology, A.P. issued the impugned Memo No.9900/E4/98, dated 26-5-1998 calling for objections from the

applicants against the intended action for regularization of services in the cadre of Inspectors as per the list communicated by the A.P.Public Service Commission and the 2nd respondent-The Director of Mines & Geology is intending to change the date of regularization of the applicants given by the appointing authority of the concerned Unit i.e., the Assistant Director of Mines & Geology of concerned District from the date of joining as Inspectors by altering the dates in accordance with the list communicated by A.P. Public Service Commission for the Multi Zones.

10. In the counter affidavit filed by respondents 1 and 2, substantially the same stand as taken before the Tribunal had been reiterated. It was averred that on the request of the 3rd respondent to fix seniority based on the ranking assigned by A.P.Public Service Commission in the year 1986 to the 2nd respondent, revised provisional seniority list was prepared and communicated to the writ petitioner and others by Memo No.9900/E4/88, dated 26-5-1998 to file objections within 15 days from the date of receipt of the memo. It is also further stand taken in this regard that the posts of Inspectors are governed by Adhoc Rules issued by G.O.Ms.No.215, Industries & Commerce, dated 13-3-1970. According to the Rules, the post of Mines Inspector is to be filled by direct recruitment and these posts are District cadre posts. The Assistant Director of Mines & Geology concerned in the

District is the appointing authority and Mines Inspectors are having promotional channel as under:

From Inspector to Technical Assistant

From Technical Assistant to Royalty Inspector

From Royalty Inspector to Assistant Geologist etc.

It is further the stand taken in the counter affidavit that the post of Technical Assistant was also governed by Adhoc Rules in G.O.Ms.No.1153, dated 1-2-1978. The post of Royalty Inspector is governed by Adhoc Rules issued in G.O.Ms.No.555, dated 6-8-1976 of Mining Subordinate Service Rules. Subsequently, the Government issued revised A.P. Mining Subordinate Service Rules in G.O.Ms.No.205, Industries & Commerce (MI) Department dated 22-6-1999 for recruitment to the post of Technical Assistants, Royalty Inspectors. Likewise, the posts of Assistant Geologists and Assistant Director of Mines and Geology, Director of Mines and Geology which are State-wide posts are governed by Special Rules issued in G.O.Ms.No.59, Industries & Commerce Department dated 10-3-1998. The post of Inspector in the Department was a direct recruitment post and according to the Adhoc Rules issued in G.O.Ms.No.215, dated 13-3-1970 the educational qualification prescribed was B.Sc. in Geology. The Mines Inspectors were eligible for promotion to the post of Technical Assistant after having put in minimum service of two

years. Likewise, the Technical Assistants are eligible for promotion to the post of Royalty Inspector after putting in three years of service. Further, the Royalty Inspector is eligible for promotion to the post of Assistant Geologist, Assistant Director of Mines and Geology, Deputy Director of Mines and Geology, Joint Director of Mines and Geology, Director of Mines and Geology which is a state-wide Gazetted post after putting in three years of service in the feeder category.

11. It was further stated that after promulgation of the Presidential Order i.e., Six Points Formula, all the Non-Gazetted Officer posts had been organized under local cadres and to this effect Government issued orders in G.O.Ms.No.490, dated 1-6-1976 read with Memo No.887, Industries & Commerce Department dated 6-12-1976 and G.O.Ms.No.348, Industries & Commerce Department, dated 11-6-1977. According to the localization, Inspectors, Lower Divisional Clerk, Typists and Steno-Typists Posts are organized as District cadre posts. Similarly, the Technical Assistant and Royalty Inspectors had been organized into Multi-Zone Cadres. The Multi Zone-I consists of Zones I, II, V and VI. Multi Zone II consists of Zones III and IV. Assistant Geologist, Assistant Director of Mines and Geology, Deputy Director of Mines and Geology, Joint Director of Mines and Geology, Director of Mines and Geology are State-wide posts governed by Special Rules framed in G.O.Ms.No.385,

Industries & Commerce (M.1) Department, dated 7-5-1979 read with G.O.Ms.No.59, Industries & Commerce (M.I) Department dated 10-3-1998. It was further stated that Andhra Pradesh Public Service Commission in the year 1985, notified 9 vacancies of Mines Inspectors and thereafter held written examinations on 10-1-1986 and Sri G.Shravan Kumar Reddy and other applicants in the O.A. were selected by Andhra Pradesh Public Service Commission. The Andhra Pradesh Public Service Commission vide their Letter No.1258/36/86 dated 3-4-1986 allotted them in the order of merit to the following Districts:

Sl. Name Name of the District Date of joining
No. to which allotted at District Office

SARVASRI

1. Habibullah Khan Kadapa Not joined
2. V.Bhagavantha Warangal 15-5-1986
3. D.Subba Rao Vijayanagaram Not joined
4. K.Lakshmana Babu Nalgonda 1-5-1986
5. K.Subba Rao East Godavari 26-5-1986
6. P.Pullaiah Anantapur 2-5-1986
7. W.B.Chandra Sekhar Adilabad 12-6-1986
8. V.Koteswara Raju Visakhapatnam 16-4-1986
9. G.Shravan Kumar Reddy Hyderabad 21-4-1986
10. D.V.V.Satyanarayana

Reddy Krishna 13-12-1986

11. M.Sudhakar Guntur 18-11-1988

12. G.Ramachandra Rao Kurnool 3-12-1988

13. K.Venkata Rao Krishna 24-12-1988

As per the above list communicated by A.P. Public Service Commission Sri V.Bhagavantha Reddy stands first in the merit lit whereas Sri V.Koteswara Raju and Sri G.Shravan Kumar Reddy figure 8th and 9th in the list. The concerned Assistant Director of Mines and Geology of the respective Districts regularized their services from the date of their joining as Mines Inspector as mentioned above. As such, the services of Sri V.Koteswara Raju and Sri G.Shravan Kumar Reddy were regularized in the category of Mines Inspector earlier to Sri V.Bhagavantha Reddy which is contrary to merit list communicated by the A.P. Public Service Commission. It was further stated that the candidates who had been regularized in the cadre of Mines Inspector were later on promoted to the posts of Technical Assistant and their services were regularized in the said category. Thereafter the applicant also was promoted to the post of Royalty Inspectors through proceeding No.11551/F1/86 of Director of Mines and Geology and he was permitted to join duty as Royalty Inspector on 4-3-1997. They were working as Royalty Inspectors in Multi Zone I on the date of filing the O.A. The seniority list in the

category of Technical Assistants was prepared by integrating the seniority of different unit of appointments (Districts) in the cadre of Mines Inspectors. This was contrary to the ranking given/assigned by the A.P. Public Service Commission in their letter No.1258/36 dated 3-4-1986. Therefore the 3rd respondent requested to give him appropriate seniority in the category of Technical Assistants and Royalty Inspectors based on the ranking assigned by A.P. Public Service Commission in the cadre of Mines Inspector. In pursuance of this, the seniority was provisionally revised in Memo No.9900/E4/88 dated 26-5-1998 and communicated to all the concerned to file objections within 15 days of receipt of the above memo. But before exhausting the remedy available to them in the statute, they rushed to the Tribunal and the Tribunal dismissed the O.A. as premature. As per Rule 36 (old Rule 33(f)(a)) of A.P. State and Subordinate Service Rules, the seniority of the persons shall be determined (i) in respect of the candidates selected by Andhra Pradesh Public Service Commission or other selecting authorities by direct recruitment with reference to their ranking assigned irrespective of date of commencement of their probation in that category (ii) in respect of the persons promoted or appointed by transfer (involving) the dates from which they were placed on their probation. The applicant filed the said O.A. at the time of their promotion to the post of Assistant Geologist and the said O.A. was dismissed as premature. However it

is submitted that the writ petitioner is presently working as Assistant Director of Mines and Geology.

12. It was further averred that the 3rd respondent who was also appointed as Mines Inspector had represented that his seniority may be fixed with reference to the ranking assigned to him by the Andhra Pradesh Public Service Commission. In pursuance of the said representation, revised provisional seniority list was prepared as under and communicated through office Memo No.9900/E4/88 dated 26-5-1998 with a request to file objections within 15 days from receipt of the order.

As per Date of Joining As per Andhra Pradesh Public Service Commission List

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MULTI ZONE-I

SARVASRI SARVASRI:

1. V.Koteswara Raju 1. V.Bhagavantha Reddy
2. G.Shravan Kumar Reddy 2. K.Lakshmana Babu
3. K.Lakshmana Babu 3. K.Subba Rao
4. V.Bhagavantha Reddy 4. W.B. Chandra Sekhar
5. K.Subba Rao 5. V.Koteswara Raju
6. W.B.Chandra Sekhar 6. G.Sravan Kumar Reddy
7. K.Venkat Rao 7. D.V.V.Satyanarayana Reddy
8. D.V.V. Satyanarayana Reddy 8. K.Venkat Rao

MULTI ZONE-II

1. P.Pullaih 1. P.Pullaih

2. M.Sudhakar 2. M.Sudhakar

3. G.Ramachandra Rao 3. G.Ramachandra Rao

The concerned Assistant Directors of Mines and Geology had regularized the services of the applicants and others from the date of joining duty in the cadre of Mines Inspector is not correct. Regularisation of services had to be done as per the ranking assigned by A.P. Public Service Commission as mentioned in the table. As per Rule 26 of A.P. State and Subordinate Service Rules, Heads of Department are empowered to review the seniority. In stead of replying to the memo, the writ petitioner staright away filed O.A.No.3908/98 before the Tribunal. Therefore, the Tribunal by Judgment dated 14-10-2003 rightly dismissed it as premature.

13. At para-10 of the counter affidavit it was stated that during the year 1985-86 there were 13 posts of Mines Inspectors vacant, one post in each District and 2 posts in Krishna District. The Mines Inspectors were allotted to respective District as allotted by A.P. Public Service Commission. Their regularization and probation was also declared in the said cadre by the respective Assistant Directors

of Mines and Geology in accordance with the General Rule 25 of A.P. State and Subordinate Service Rules (old Rules). However, the ranking assigned by the A.P. Public Service Commission ought to have been adhered to and therefore the revised provisional seniority list was prepared and communicated to them. Even though the 3rd respondent was appointed in another District it falls in Multi Zone-I. Hence the 3rd respondent has locus-standi to file the representation as his seniority in the promotion posts in Multi Zone-I and State-wide cadre posts was affected. As per Sub-rule 26 of A.P. State and Subordinate Service Rules, an appeal shall lie against an order fixing the seniority of a person or affecting any conditions of service passed by the appointing authority to the authority to whom an appeal would lie against an order of the service, class and category. As per sub-rule 26(b), the power shall be exercised by the Head of the Department.

14. At para-11 of the counter affidavit it was averred that the 3rd respondent, one of the Mines Inspectors, requested to modify the seniority as per the order of merit given by the Andhra Pradesh Public Service Commission. In this connection it is stated that as per the Presidential Order issued in G.O.Ms.No.229, Industries & Commerce Department dated 13-3-1979, the post of Mines Inspector is a District cadre post and the concerned Assistant Directors of Mines and Geology are the appointing authorities. The petitioner and the 3rd

respondent were allotted to various Districts by the A.P. Public Service Commission and therefore the seniority of the individuals is to be taken into consideration as per the order of merit allocated by A.P. Pubic Service Commission. As per Rule 36(i), old Rule 33(f)(a) of A.P. State and Subordinate Service Rules, the services of the writ petitioner and others have to be regularized basing on the A.P. Public Service Commission's list. The next promotional post of Mines Inspector is Technical Assistant which is a Multi Zonal cadre. A common seniority list is to be maintained as per Rule 33(b) of A.P. State and Subordinate Service Rules and such common or integrated seniority list is to be prepared as per the date of regularization and as per the merit list of A.P. Public Service Commission so prepared under Rule 36(1) (old Rule 33(f)(a)) and Rule 33(b) of A.P. State and Subordinate Service Rules. The post of Mines Inspector was an isolated post in each District. Therefore a common seniority list of Mulzi Zonal wise was prepared as per the above rules. The action of the 2nd respondent in issuing the Memo No.9900/E4/85 dated 26-5-1998 was in accordance with the rules and no favour had been shown to the 3rd respondent as alleged by the writ petitioner. The Tribunal rightly observed that the when final seniority is not prepared for quite a long time, the right vested in a particular individual by virtue of selection through A.P. Public Service Commission who got seniority on his selection cannot be deprived

due to inaction of the lower authorities sitting at the District level in marking regularization at their whims and fancies and if it is allowed to be done grave injustice and anomalous situation would arise. The Tribunal also observed that only show cause notice was issued to the applicants through the impugned Circular orders calling for their objections so that they may not plead tomorrow that something is done behind their back.

15. It was averred at para-12 of the counter affidavit that the post of Mines Inspector was governed by Adhoc Rules issued in G.O.Ms.No.215, dated 13-3-1970. It is stipulated under Rule 5 that the person appointed to the post shall from the date on which he joins duty be on probation for a total period of two years on duty within a continuous period of three years. It was further averred that the A.P. Public Service Commission had given merit list and accordingly based on the merit list only the date of regularization shall commence. The Director of Mines and Geology is the competent authority to review the seniority list and to review the regularisation ordered by the Assistant Director of Mines and Geology. Aggrieved by the proposed revision of seniority list communicated to them in Memo No.9900/E4/98 dated 26-5-1998, the writ petitioner and the other applicant filed O.A.No.3908/98 which was dismissed on 14-10-2003. The Tribunal observed that there is no merit in the contention

of the writ petitioner and the impugned orders do not warrant any interference by the Tribunal. It was further averred that Sri P.Pullaiah was originally allotted to Anantapur District for appointment to the post of Inspector and Anantapur District comes under Zone IV. The promotion post of Technical Assistant is Royalty Inspector which is Multi Zone I and II and Anantapur District comes under Multi Zone II. There were vacancies in Multi Zone II in the category of Technical Assistant and Royalty Inspectors. The said Sri P.Pullaiah who was a regular candidate on completion of minimum service had an opportunity of being promoted earlier in the said Zone in view of the availability of the post in Multi Zone II. Zonal seniority cannot be clubbed and it will be treated as a separate local cadre for Unit for appointment as well as for fixing the seniority. The Tribunal on 15-6-1998 in O.A.No.3908/98 had passed order restraining the respondent from passing any final orders until further orders by the Tribunal. As such the seniority list was not disturbed and promotions were effected subject to final outcome of the Judgment of the Tribunal. Similarly G.Shravan Kumar Reddy is also promoted to the post of Assistant Director of Mines and Geology. The Tribunal in the Judgment dated 14-10-2003 dismissed the O.A. and aggrieved by the same the present Writ Petition was filed.

16. It was also further averred at para-13 of the counter affidavit that 13 Mines Inspectors were selected and allotted by A.P. Public

Service Commission to the posts of Inspectors and they were allotted to various District Offices by letter No.1255/56/84 dated 3-4-1986 of A.P. Public Service Commission. Accordingly the respective Assistant Directors of Mines and Geology who are the appointing authorities had permitted them to join duty in respective Districts and their services also had been regularized by the respective Assistant Directors of Mines and Geology taking into consideration the date of joining in the post. These posts are isolated posts in the District except in Krishna District where two posts are existing at that time in the cadre strength. The A.P. Public Service Commission by Letter No.1255/86/94 dated 3-4-1986 had communicated the merit list. In pursuance of the seniority mentioned therein, the 3rd respondent requested to assign him seniority. Accordingly revised provisional seniority in the cadre of Mines Inspector was prepared and communicated through Memo No.9900/E4/98 dated 26-5-1998. Further, some of the observations of the Tribunal in its Judgment dated 14-10-2003 at para-13 also had been pointed out.

17. The 3rd respondent filed W.V.M.P.No.3575/2004 to vacate the interim order dated 24-10-2003. A counter affidavit in detail was filed substantially repeating the same stand as that of the Government. The specific stand taken is that the inter-se seniority is governed by Rule 33(b) of the A.P. State and Subordinate Service Rules, 1962 and Rule 36(i) of A.P. State and Subordinate service Rules 1996 and

not Rule 33(a) of the said Rules. It was also stated that the 3rd respondent filed report dated 17-4-1998 to the 2nd respondent since he came to know about the mistake committed by the 2nd respondent while fixing the inter-se seniority among directly recruited Mines Inspectors batch of 1986 and also mistake in fixing seniority in the cadre of Technical Assistant and Royalty Inspector. It is stated that the 2nd respondent ought to have fixed the seniority following the order of preference shown by the A.P. Public Service Commission in the initial recruitment cadre of Mines Inspector as per Rule 33(b) of A.P. State and Subordinate Service Rules 1962 and also as per Rule 33(b) and Rule 36(i) of A.P. State and Subordinate Service Rules 1996 and the same ought to have been the basis for fixing the seniority in the cadre of Technical Assistant as well as in the cadre of Royalty Inspector. Further, the 2nd respondent is empowered to correct the mistake committed by him and only with that purpose Memo No.9900/E4/98 dated 26-5-1998 was issued calling for the objections from the concerned individuals. The writ petitioner and another individual in stead of submitting the objections choose to rush to the Tribunal and filed the O.A. The writ petitioner also did not avail the statutory appeal before filing of the O.A. and after hearing the writ petitioner, the Tribunal also dismissed the O.A. filed by the writ petitioner and the other applicant. Specific stand had been taken

that the action taken by the 2nd respondent in correcting the mistake is perfectly valid and legal and the said action is in accordance with Rule 33(b) of General Rules (A.P. State and Subordinate Service Rules, 1962 and 1996) and also Rule 36(i) of A.P. State and Subordinate Service Rules 1996. Further, several details had been furnished in answer to the specific grounds raised in the Writ Petition and it is also stated that respondents 1 and 2 are not acting upon the Memo in view of the interim orders and hence the interim orders are to be vacated.

18. At the outset, it may be relevant to have a look at para-13 of the impugned order made by the Tribunal which reads as hereunder :

> "On a careful consideration of the submissions made by both parties, undoubtedly the learned Counsel for the Applicants relied upon the Adhoc Rules issued by the Government in G.O.Ms.No.215, Industries and Commerce Department dated 13-3-1970. But A.P. State and Subordinate Service Rules are framed on regular basis under proviso to Article 309 of the Constitution of India. It is further contended by the Applicant's Counsel that based on the A.P. State and Subordinate Service Rules then existing the Adhoc Rules are framed and those Rules are applicable. On a careful consideration of the respective submissions made, if the earlier Rule is followed, in the opinion of the Tribunal anomalous inasmuch as a person, who is nearer to the place of his appointment on receipt of appointment orders may join duty immediately and a person, who is far away from the place of appointment may not be able to join duty immediately. So, seeing the unreasonableness in the earlier Rules latter Rules are framed. Even if there is any Rule saying that seniority of a person, who is selected by A.P. Public Service Commission should be determined taking into account the date of his joining duty, it does not stand to legal scrutiny and it cannot be upheld by this Tribunal. Obviously taking into consideration all these aspects, rectifying the anomalous situation that was existing, new A.P. State and

Subordinate Service Rules are issued. So that Rule which is more consistent with the rationale has to be followed in doing justice to the parties. When final seniority list is not prepared on account of negligence or mistake committed by the concerned authority for quite a long time, the right vested in a particular individual by virtue of his selection through A.P. Public Service Commission who has got seniority on his selection be deprived due to the inaction of the lower authorities sitting at the District level in making regularizations at their whims and fancies. If that is allowed to be done, grave injustice and anomalous situation arises. As a matter of fact, only show cause notice was issued to the Applicants through the impugned orders calling for their objections so that they may not plead tomorrow that something is done behind their back. Without answering the show cause notice, the Applicants rushed to the Tribunal prematurely. On that aspect there is any amount of force in the contention of the learned Counsel for the unofficial Respondents. In view of the above, there are no merits in the contentions of the Applicants and the impugned orders do not warrant any interference by this Tribunal."

19. It is not in serious controversy that the writ petitioner and the unofficial respondent had been allotted to the respective Districts/District Units and they were appointed to the Units concerned and their regularisation in the cadre of Mines Inspector was done by the respective appointing authorities, the Assistant Directors of Mines & Geology, in accordance with the general Rules 23 and 25. Rule 34 of the A.P. State and Subordiante Service Rules 1996 reads as hereunder :

Preparation of integrated or common seniority list of persons belonging to different units of appointment : Where as integrated or common seniority list of a particular class, or category or grade in any service belonging to different units of appointment has to be prepared for the purpose of promotion or appointment by transfer to a class or category having different units of appointment or for any other purpose,

such an integrated or common seniority list shall be prepared with reference to the provision of sub-rule (a) of Rule 33, provided that the seniority list of the persons inter-se belonging to the same units shall not be disturbed.

Explanation :- The principle specified in this rule shall be applicable even where a common integrated list is required to be prepared for categories in different services, classes or categories.

Rule 5 of the Special Rules issued in G.O.Ms.No.215, dated 13-5-1970 dealing with **Probation** reads as hereunder :

"The person appointed to the post shall from the date on which he joins duty be on probation for a total period of two years on duty within a continuous period of three years".

Rule 33 of the A.P. State and Subordinate Service Rules 1962 deals with seniority and Rule 33(b) reads :

"The appointing authority may, at the time of passing an order appointing two or more persons simultaneously to a service, fix either for the purpose of satisfying the rule of reservation of appointments or for any other reason the order of preferences among them, and where such order has been fixed, seniority shall be determined in accordance with it.

Provided that for the purpose of promotion the next higher category of Gazetted posts, inter-se seniority of persons recruited direct to the subordinate services during the period commencing on the 1st November, 1956 and ending with 31st December, 1973 separately in Andhra and Telangana regions, shall be determined by the ranking assigned by A.P.Public Service Commission in the common ranking or by the competent authority as the case may be, after following the rule of reservation".

In the light of the Special Rules issued in G.O.Ms.No.215, dated 13-5-1970 referred to supra, the services of the writ petitioner and others had been regularized in accordance with the said Rules and the General Rules in their respective Units of appointment by the concerned appointing authorities. It is also not in serious controversy that the seniority in the category of Inspector of Mines had been settled long prior to 12 years and after such long lapse of time a representation is made by 3rd respondent to disturb the said seniority on the ground of his merit obtained in A.P. Public Service Commission. It is pertinent to note that the effect of the representation on the impugned show cause notice is to alter the dates of regularisation after a lapse of 12 years after the writ petitioner had been promoted to two higher categories ie.., Technical Assistant and also Royalty Inspector. The regularisation orders had been issued in the light of Rule 5 of Rules under G.O.Ms.No.215, dated 13-5-1970 and also in accordance with the General Rule 23(a) of A.P. State and Subordinate Service Rules, 1962 as the said Rules were operative during the said period. The A.P. State and Subordinate Service Rules of 1996 came into force long subsequent thereto and on the strength of the amended Rules also, the present representation had been made by the 3rd respondent to disturb the seniority already fixed which would result in unsettling the seniority fixed long back. No doubt, submissions at length were made to the effect that it is only at

the stage of show cause notice and hence at this stage inasmuch as opportunity had been given to file objections, all the objections if any can be raised before the 2nd respondent and hence it would not be appropriate to interfere with the Memo issued by the 2nd respondent at this stage.

20. As can be seen from the respective pleadings of the parties and also the material available on record and the impugned order of the Tribunal, several of the facts are not in controversy. Seniority was fixed in the respective District Units and the fact that the writ petitioner and the 3rd respondent are in different District Units also is not in serious controversy. Subsequent thereto some promotions also had been given and ultimately for the reason that for further promotions his chances would be affected, at this point of time, the 3rd respondent thought of making the present representation. In **P.MOHAN REDDY Vs. E.A.A. CHARLES** while deciding the aspect of seniority, the Apex Court held that the right to get seniority determined as per rules in force at the time of his recruitment vests in an employee and redetermination of seniority on the basis of amended seniority rule can be done only if amended rule is given retrospective effect and seniority not to be changed over and over again as and when there are changes of criteria. Reliance also was placed on **DASARI SATYANARAYANA Vs. BAPAYYA AND ANOTHER** to show that a writ of certiorari of this nature can be

issued in view of the fact that the 2nd respondent lacks jurisdiction to issue show cause notice impugned in the O.A. In **B.S. BAJWA AND ANOTHER Vs. STATE OF PUNJAB AND OTHERS** it was held that in service matters the question of seniority not to be reopened after lapse of a reasonable period because that results in disturbing the settled position which is not justifiable. No doubt an attempt was made to distinguish these decisions on facts. I n **NARRAVULA KOTAM RAJU Vs. REGIONAL DEPUTY DIRECTOR OF FISHERIES, KAKINADA AND OTHERS** the Division Bench held that inter-se seniority of employees would be governed by Rules existing at the relevant point of time and the inter-se seniority of respective candidates fixed after due notice and after considering the objections raised and as per the Rules then existing cannot be reopened after a long lapse of time by reason of subsequent amendment of relevant Rule or insertion of new Rule particularly when candidates were promoted to more than one post meanwhile. Reliance also was placed on **M.SHYAM SUNDER AND OTHERS Vs. GOVERNMENT OF A.P. AND OTHERS** wherein it was held that altering the date of regularisation as well as seniority of promotee engineers contrary to the earlier G.Os. 259 and 260 which have been sustained earlier by the High Court as well as Supreme Court is illegal and the Government cannot exercise powers of review for the second time under paragraph 13 of the Presidential Order and the impugned order

is violative of the principles of natural justice. Reliance also was placed on **UNION OF INDIA AND OTHERS Vs. UPENDRA SINGH .**

21. In the hierarchy merely because in promotional posts certain of the Zonal, Multi Zonal and State-wide seniority posts, promotional chances would be affected seniority settled taking the District Unit as criterion cannot be disturbed by similarly placed employees of other Districts or Zones as the case may be, that too after a long lapse of time. If this is permitted by Courts, they would be contributing to continuous unsettled too many litigations which may not be even in the interest of administration. Both in equity and law, the show cause issued after a long lapse of time virtually reopening the settled seniority cannot be permitted. Suffice to state that they would be opening Pandora's box in the sphere of service jurisprudence. May be, at times, Courts may come across some anomalies, but however, the Courts are to be slow and refrain from disturbing such settled rights after a long lapse of time. What would be the reasonable time may have to be decided depending upon the facts and circumstances of a given case. If the seniority fixed at one level is disturbed on the ground that at higher post of promotion i.e., Zonal, Multi Zonal or State-wide etc., chances would be affected it would result in chaos and confusion leading to and resulting in unending litigations and they may have to be minimized. Courts had evolved this principle in service jurisprudence well based on judicial

experience. It is no doubt true that when illegality on the strength of statutory provisions, rules or violation of Constitutional rights are well pointed out they cannot be totally ignored by Courts, but at the same time the settled rights relating to seniority cannot be disturbed unless Courts are thoroughly satisfied in this regard relating to a clear illegality. Balance may have to be weighed and maintained in deciding such matters.

22. In the present case, initially the recruitment being at the District level, District as a Unit, and since the competent authorities had regularized and certain promotions also had been given on the strength of the same and the same had been given in the light of Rule 5 of the Special Rules referred to supra, the 3rd respondent making an attempt by making a representation to reopen the same, though belonging to a different District Unit altogether, cannot be justified and this Court is of the opinion that such persons have no locus to question the seniority already fixed and settled in the case of other District Units. Consequent thereupon, the 2nd respondent issuing the impugned memo in the O.A. definitely suffers from jurisdictional flaw and hence on the ground that the promotional chances in the higher level would be affected, such representation could not have been entertained and the impugned memo in the O.A. could not have been issued and this is impermissible apart from being inequitable and evidently in the light of Rule 5 of the Special

Rules and that too after a long lapse of time. Though certain additional aspects had been touched by the Tribunal, this Court is of the considered opinion that the Tribunal committed an error in declining to interfere and dismissing the O.A. Viewed from any angle, the impugned memo in the O.A. and the impugned order made by the Tribunal cannot be sustained and for the reasons already recorded supra, the writ petitioner is bound to succeed and accordingly the impugned memo in the O.A. and the impugned order made by the Tribunal are hereby quashed.

23. The Writ Petition is accordingly allowed. No order as to costs.

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Justice G.Bikshapathy

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Justice P.S. Narayana

Date : -2-2005

L.R. copy to be marked : YES / NO

AM

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice onTuesday, Twenty Second Day of February, Two Thousand and Five.

ASSISTANT REGISTRAR

To

One fair copy to Hon'ble Sri Justice G.Bikshapathy (for his Lordship's kind perusal)

One fair copy to Hon'ble Sri Justice P.S. Narayana (for his Lordship's kind perusal)

1 The Principal Secretary,

State of Andhra Pradesh,

Industries & Commerce (M.I) Department, Secretariat, Hyderabad.

2 The Director of Mines & Gelogy, A.P.

8th Floor, B.R.K.R. Complex,

Near Tankbund, Hyderabad.

3. Assistant Director of Mines & Geology,
Khammam Dist.

4 Assistant Director of Mines & Geology,

Palamaneru, Chittoor District.

5 Assistant Director of Mines & Geology,

Nizamabad, Nizamabad District.

6 Assistant Director of Mines & Geology,

Karimnagar, Karimnagar District.

7. Two C.Cs. to Government Pleader for Services-I,

High Court of A.P.

High Court Buildings,

Hyderabad (OUT).

8. 8 L.R. copies

9. The Under Secretary, Union of India, Ministry of Law, Justice

and Company Affairs, New Delhi.

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11. The Registrar, A.P. Administrative Tribunal, Purani Haveli,

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12. Two C.D. copies